

# North York Moors National Park Authority

## Delegated decision report

**Application reference number:** NYM/2024/0065

**Development description:** certificate of lawfulness for use of land as garden associated with The Haven, Sandal House, The Hoe, and Georgian House in excess of ten years

**Site address:** Land to the rear of The Haven, King Street, Robin Hoods Bay

**Parish:** Fylingdales

**Case officer:** Mrs Jill Bastow

**Applicant:** Mr Gordon Wearmouth

31 Norlinton Close, Orlingbury, Kettering, Northants , NN14 1FD

## Director of Planning's Recommendation

### Approval

1. That the development described in the First Schedule has been carried on for more than ten years.

### First Schedule

The use of land described in the Second Schedule as domestic garden

### Second Schedule

Land to the rear of The Haven, King Street, Robin Hoods Bay as shown outlined red on the attached plan.

### Note:

This determination only addresses lawfulness under the Town and Country Planning Act 1990. It does not address any other public or private rights issues that may exist at the site/location

## Consultation responses

### Parish

Object as, historically, adjacent properties have paid a 'peppercorn' rent to allow them to jointly use this land

### Third party responses

#### Ms Sally Mallard, 1 Coastguard Cottages, Robin Hoods Bay

Makes the following comments:

- The Haven is a holiday let (and therefore a business not a private dwelling) and therefore this land has not been used as a private garden since 1998.
- The land has been used as a recreational area by residents and visitors alike for many years with access from the path to the sea wall, but this has recently been stopped.
- Why did the Council not make the land publicly available to purchase given that it has been used for public recreation for many years, not as a private garden?
- The land definitely has community value and had notice of its sale been given then residents would have been able to make the Council aware of its community value in advance of the sale.
- The fencing of the area will make The Haven a much more attractive property for holiday makers from which the owners will no doubt benefit.
- On a technical point, the restrictive covenant specifies "domestic garden" not "private garden". Are 'domestic' and 'private' the same?

#### Mr Iain Lambeth, 116 Birmingham Road, Aldridge, Walsall (property interests in Robin Hood's Bay since April 2022)

Objects for the following reasons:

- The land has not been used as a private garden for in excess of 10 years and has been used by the general public for to sit on during sunny days and to listen to music events, taking place on the top of the Sea Wall area (having personally attended 4 of these events in the last 2 years).
- The land seems to have been purchased during the period of time that the Sea Wall area was closed off to allow for repairs which raises the question whether the sale was legitimate, with the correct notifications issued prior to sale.
- The Restrictive Covenant stating, "not to use the property....for any other purpose whatsoever than that of a domestic garden...only in connection with the adjoining premises known as The Haven...." is clearly in place to avoid any "business activities" taking place on the land, it does detract from the pleasure

and enjoyment of this piece of land, for members of the public, visiting the area of the Sea Wall.

- It is possible if this application is granted that the owner will look to fence off the area which will further negatively impact on the enjoyment of this area by members of the public.
- The Haven is currently operated as a holiday let and not a domestic and as such, the application is illegitimate & should not be accepted.

**Publicity expiry**

Advertisement/site notice expiry date: 8 March 2024

View of the land to which the application relates looking west from the sea wall



View of the land from the access to the rear of The Haven and adjoining properties





View from the pedestrian access to the sea wall



## Background

The Haven is a grade II Listed Building situated on the east side of King Street in lower Robin Hoods Bay. It is built of coursed herringbone-tooled sandstone under a pantile roof with brick chimney stacks. To the rear (east) lies an area of hardstanding which provides access to the property and also the neighbouring properties of Sandal House, The Hoe and Georgian House, beyond which lies an area of grass which slopes away to the sea wall.

The application for a certificate of lawfulness relates to the use of the grassed area as domestic garden in association with The Haven and also the adjoining three properties.

In support of this application for a certificate of lawful use the applicant has provided the following evidence:

- Copy of the Land Registry Transfer of Registered Title from Scarborough Borough Council to the applicant dated November 2023;
- Copy of the Licence granted by Scarborough Borough Council to the applicant to use the land as garden dated May 2015;
- Copy of the review/renewal of the licence granted by Scarborough Borough Council to the applicant to use the land as garden dated November 2014;
- Copy of the review/renewal of the tenancy granted by Scarborough Borough Council to the applicant to use the land as garden dated February 2001;
- Copy of the tenancy granted by Scarborough Borough Council to the applicant on completion of their purchase of The Haven to use the land as garden dated December 1998;
- Statement provided by the applicant summarising the tenancies and licencing arrangements granted since 1998 and the sale of the land in 2023 along with how the land has been used and maintained;
- Five statements from previous/current owners of the adjoining three properties who have been granted use of the land as garden confirming how the land has been used since 1995 and by whom.

## Main issues

The legislation, under Section 191 of the Town and Country Planning Act 1990, provides that uses and operations are “lawful” if no enforcement action can be taken against them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and they are not in contravention of any enforcement notice which is in force. The first issue to consider therefore is whether the use of the land constitutes operational development, or a material change of use. In this case, as it relates to the use of the land as domestic garden, the enforcement period is ten years.

The legislation states that the onus is on the applicant to establish that the land has been used by domestic garden in association with The Haven and the adjoining three properties on King Street continuously for in excess of the past ten years. They must establish this on the test of 'balance of probability'. Independent evidence is not required in order to substantiate an applicant's claim however the applicant's evidence should be sufficiently precise and unambiguous in order to lead to the conclusion that, based on the balance of probabilities, the existing use is lawful. If there is no evidence to contradict the applicant's version of events then there is no good reason to withhold the certificate, and the Authority must proceed on the basis that neither the identity of the applicant nor the planning merits of the use or activity are relevant to the consideration of the purely legal issues which are involved in determining an application.

From the documents submitted, the Licence granted by Scarborough Borough Council (SBC) in 2015 gave the applicant the "right to use the land as garden land in association with the properties in King Street" and prior to this SBC granted the applicant tenancy to use the land as garden land since 1998. In all cases a condition/obligation was imposed requiring the applicant to allow the other three adjoining properties on King Street (Sandal House, The Hoe and Georgian House) to have access to the land.

From the Land Registry Transfer document dated November 2023, following the sale of the land to the applicant, the restrictive covenants stipulate that the land shall not be used for any other purpose than that of a domestic garden only in connection with the The Haven and to cooperate with the owners of the three adjoining properties with a view to permitting access over the land.

These documents demonstrate how the land has been leased to the applicant but not necessarily how it has actually been used. Given the objections the Authority has received from third parties which contradict the claim that the land has been used for the past ten years solely as private garden and has in fact been more widely used by the public, the applicant has provided more evidence in support of the claimed use, in the form of statements from the owners of the three adjoining properties (Georgian House, The Hoe and Sandal House) confirming how the land has been used. These statements all confirm that the land has been used as private garden by the owner of The Haven and the three adjoining properties as a space to relax, sunbathe, enjoy the views and eating outside/BBQ, in the company of family/friends/ guests and not as a public space. They also confirm that the applicant has held a license and tenancy on the land for at least 25 years and has maintained the land in good condition during that time.

With regard to the Parish Council's objection on the grounds that the adjacent properties have paid a 'peppercorn' rent to allow them to jointly use this land, this does not conflict with the applicant claim and evidence as to the use of the land. Evidence has been submitted that demonstrates that it has been used as domestic garden by the occupants of The Haven and also the neighbouring properties of Sandal House, the Hoe and Georgian House, and this is also reflected in the Land Registry transfer title from

Scarborough Borough Council which requires the applicant to co-operate with the owners of those three adjacent properties to allow access over the property as required. The use of land as domestic garden and a covenant allowing access for neighbours across that land are not mutually exclusive in planning terms.

On the basis therefore that despite the contrary comments from third parties, it is accepted that, based on the evidence submitted by the applicant and supported by the owners of those neighbouring properties, on the balance of probabilities that the necessary unauthorised period has occurred such as to give rise to a lawful use of the land as domestic garden and as such a Certificate of Lawfulness should be issued.